

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

TRAVIS ESPARZA,	)	
	)	No. CV-10-245-JPH
Plaintiff,	)	
	)	ORDER GRANTING DEFENDANT'S
v.	)	MOTION FOR SUMMARY JUDGMENT
	)	
MICHAEL J. ASTRUE, Commissioner	)	
of Social Security,	)	
	)	
Defendant.	)	
	)	
	)	

---

BEFORE THE COURT are cross-motions for summary judgment noted for hearing without oral argument on June 10, 2011 (ECF No. 11, 14). Attorney Kenneth L. Isserlis represents plaintiff; Special Assistant United States Attorney Jordan D. Goddard represents the Commissioner of Social Security (Commissioner). The parties have consented to proceed before a magistrate judge (ECF No. 4). On May 31, 2011, plaintiff filed a reply (ECF No. 16). After reviewing the administrative record and the briefs filed by the parties, the court **GRANTS** defendant's motion for summary judgment (**ECF No. 14**) and **DENIES** plaintiff's motion for summary judgment (ECF No. 11).

**JURISDICTION**

Plaintiff protectively applied for disability insurance benefits (DIB) and social security income (SSI) benefits on July 26, 2007, alleging disability beginning September 1, 2006, due to

1 borderline intellectual functioning<sup>1</sup> (Tr. 112-118, 121-127). The  
2 applications were denied initially and on reconsideration (Tr. 73-  
3 76, 77-80).

4 At a hearing before Administrative Law Judge (ALJ) Robert S.  
5 Chester on May 14, 2009, plaintiff, represented by counsel,  
6 plaintiff's father, George Esparza, and a vocational expert  
7 testified (Tr. 35-68). On June 4, 2009, the ALJ issued an  
8 unfavorable decision (Tr. 19-28). The Appeals Council denied Mr.  
9 Esparza's request for review on June 19, 2010 (Tr. 1-3). The ALJ's  
10 decision became the final decision of the Commissioner, which is  
11 appealable to the district court pursuant to 42 U.S.C. § 405(g).  
12 Plaintiff filed this action for judicial review pursuant to 42  
13 U.S.C. § 405(g) on August 4, 2010 (Ct. Rec. 1).

14 **STATEMENT OF FACTS**

15 The facts have been presented in the administrative hearing  
16 transcript, the ALJ's decision, the briefs of both plaintiff and  
17 the Commissioner, and are briefly summarized here where relevant.

18 Plaintiff was 31 years old at the hearing (Tr. 38). He  
19 attended regular and special education classes and graduated from  
20 high school in 1996 (Tr. 39-40, 324). Mr. Esparza testified he is  
21 divorced and has no children. The department of vocational  
22 rehabilitation (DVR) helped him get a part-time job at a thrift  
23 store, Value Village (Tr. 49-50). Plaintiff testified he has

24 

---

1

25 The agency's denial, dated September 27, 2007, indicates  
26 plaintiff alleges disability due to being "developmentally  
27 disabled and [having] ADD" (Tr. 73). In its decision after Mr.  
28 Esparza requested reconsideration, the agency states plaintiff's  
disability claim is based on borderline intellectual functioning  
(BIF)(Tr. 77, 79).

1 worked there since February 2007 (Tr. 49), although records show  
2 no earnings for 2007 (Tr. 128). It appears he began in February  
3 2008 (Tr. 219, 230). Mr. Esparza received social security benefits  
4 at one time but lost them after Goodwill Industries helped him get  
5 a job at McCane Foods (Tr. 51).

6 He does not allege physical impairment (ECF No. 13 at 4) but  
7 testified he is disabled due to borderline intellectual  
8 functioning (BIF). He is forgetful, becomes distracted from the  
9 task at hand, and needs reminders (Tr. 51-55). Plaintiff takes the  
10 bus to work, cooks easy meals, and, with reminders, picks up his  
11 nephew at school, walks him home, and watches him until  
12 plaintiff's brother comes home (Tr. 53-54). He is unable to pay  
13 bills himself, so his brother mails them for him. Plaintiff's  
14 father gives him money to supplement his earnings at Value Village  
15 (Tr. 39, 54-55). Mr. Esparza has past relevant work as a  
16 commercial and industrial cleaner, laborer-stores warehouse  
17 worker, agricultural produce packer and sorter, cashier,  
18 construction worker, and forklift operator (Tr. 59-60).

#### 19 SEQUENTIAL EVALUATION PROCESS

20 The Social Security Act (the Act) defines disability as the  
21 "inability to engage in any substantial gainful activity by reason  
22 of any medically determinable physical or mental impairment which  
23 can be expected to result in death or which has lasted or can be  
24 expected to last for a continuous period of not less than twelve  
25 months." 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). The Act also  
26 provides that a Plaintiff shall be determined to be under a  
27 disability only if any impairments are of such severity that a  
28 plaintiff is not only unable to do previous work but cannot,

1 considering plaintiff's age, education and work experiences,  
2 engage in any other substantial gainful work which exists in the  
3 national economy. 42 U.S.C. §§ 423(d)(2)(A), 1382c(a)(3)(B).  
4 Thus, the definition of disability consists of both medical and  
5 vocational components. *Edlund v. Massanari*, 253 F.3d 1152, 1156  
6 (9<sup>th</sup> Cir. 2001).

7 The Commissioner has established a five-step sequential  
8 evaluation process for determining whether a person is disabled.  
9 20 C.F.R. §§ 404.1520, 416.920. Step one determines if the person  
10 is engaged in substantial gainful activities. If so, benefits are  
11 denied. 20 C.F.R. §§ 404.1520(a)(4)(I), 416.920(a)(4)(I). If not,  
12 the decision maker proceeds to step two, which determines whether  
13 plaintiff has a medically severe impairment or combination of  
14 impairments. 20 C.F.R. §§ 404.1520(a)(4)(ii), 416.920(a)(4)(ii).

15 If plaintiff does not have a severe impairment or combination  
16 of impairments, the disability claim is denied. If the impairment  
17 is severe, the evaluation proceeds to the third step, which  
18 compares plaintiff's impairment with a number of listed  
19 impairments acknowledged by the Commissioner to be so severe as to  
20 preclude substantial gainful activity. 20 C.F.R. §§  
21 404.1520(a)(4)(ii), 416.920(a)(4)(ii); 20 C.F.R. § 404 Subpt. P,  
22 App. 1. If the impairment meets or equals one of the listed  
23 impairments, plaintiff is conclusively presumed to be disabled.  
24 If the impairment is not one conclusively presumed to be  
25 disabling, the evaluation proceeds to the fourth step, which  
26 determines whether the impairment prevents plaintiff from  
27 performing work which was performed in the past. If a plaintiff is  
28 able to perform previous work, that Plaintiff is deemed not

1 disabled. 20 C.F.R. §§ 404.1520(a)(4)(iv), 416.920(a)(4)(iv). At  
2 this step, plaintiff's residual functional capacity (RFC)  
3 assessment is considered. If plaintiff cannot perform this work,  
4 the fifth and final step in the process determines whether  
5 plaintiff is able to perform other work in the national economy in  
6 view of plaintiff's residual functional capacity, age, education  
7 and past work experience. 20 C.F.R. §§ 404.1520(a)(4)(v),  
8 416.920(a)(4)(v); *Bowen v. Yuckert*, 482 U.S. 137 (1987).

9 The initial burden of proof rests upon plaintiff to establish  
10 a *prima facie* case of entitlement to disability benefits.  
11 *Rhinehart v. Finch*, 438 F.2d 920, 921 (9<sup>th</sup> Cir. 1971); *Meanel v.*  
12 *Apfel*, 172 F.3d 1111, 1113 (9<sup>th</sup> Cir. 1999). The initial burden is  
13 met once plaintiff establishes that a physical or mental  
14 impairment prevents the performance of previous work. *Hoffman v.*  
15 *Heckler*, 785 F.3d 1423, 1425 (9<sup>th</sup> Cir. 1986). The burden then  
16 shifts, at step five, to the Commissioner to show that (1)  
17 plaintiff can perform other substantial gainful activity and (2) a  
18 "significant number of jobs exist in the national economy" which  
19 plaintiff can perform. *Kail v. Heckler*, 722 F.2d 1496, 1498 (9<sup>th</sup>  
20 Cir. 1984); *Tackett v. Apfel*, 180 F.3d 1094, 1099 (1999).

#### 21 STANDARD OF REVIEW

22 Congress has provided a limited scope of judicial review of a  
23 Commissioner's decision. 42 U.S.C. § 405(g). A Court must uphold  
24 the Commissioner's decision, made through an ALJ, when the  
25 determination is not based on legal error and is supported by  
26 substantial evidence. See *Jones v. Heckler*, 760 F.2d 993, 995 (9<sup>th</sup>  
27 Cir. 1985); *Tackett*, 180 F.3d at 1097 (9<sup>th</sup> Cir. 1999). "The  
28 [Commissioner's] determination that a plaintiff is not disabled

1 will be upheld if the findings of fact are supported by  
2 substantial evidence." *Delgado v. Heckler*, 722 F.2d 570, 572 (9<sup>th</sup>  
3 Cir. 1983) (*citing* 42 U.S.C. § 405(g)). Substantial evidence is  
4 more than a mere scintilla, *Sorenson v. Weinberger*, 514 F.2d 1112,  
5 1119 n. 10 (9<sup>th</sup> Cir. 1975), but less than a preponderance.  
6 *McAllister v. Sullivan*, 888 F.2d 599, 601-602 (9<sup>th</sup> Cir. 1989);  
7 *Desrosiers v. Secretary of Health and Human Services*, 846 F.2d  
8 573, 576 (9<sup>th</sup> Cir. 1988). Substantial evidence "means such  
9 evidence as a reasonable mind might accept as adequate to support  
10 a conclusion." *Richardson v. Perales*, 402 U.S. 389, 401 (1971)  
11 (citations omitted). "[S]uch inferences and conclusions as the  
12 [Commissioner] may reasonably draw from the evidence" will also be  
13 upheld. *Mark v. Celebrezze*, 348 F.2d 289, 293 (9<sup>th</sup> Cir. 1965). On  
14 review, the Court considers the record as a whole, not just the  
15 evidence supporting the decision of the Commissioner. *Weetman v.*  
16 *Sullivan*, 877 F.2d 20, 22 (9<sup>th</sup> Cir. 1989) (*quoting* *Kornock v.*  
17 *Harris*, 648 F.2d 525, 526 (9<sup>th</sup> Cir. 1980)).

18 It is the role of the trier of fact, not this Court, to  
19 resolve conflicts in evidence. *Richardson*, 402 U.S. at 400. If  
20 evidence supports more than one rational interpretation, the Court  
21 may not substitute its judgment for that of the Commissioner.  
22 *Tackett*, 180 F.3d at 1097; *Allen v. Heckler*, 749 F.2d 577, 579  
23 (9<sup>th</sup> Cir. 1984). Nevertheless, a decision supported by substantial  
24 evidence will still be set aside if the proper legal standards  
25 were not applied in weighing the evidence and making the decision.  
26 *Browner v. Secretary of Health and Human Services*, 839 F.2d 432,  
27 433 (9<sup>th</sup> Cir. 1987). Thus, if there is substantial evidence to  
28 support the administrative findings, or if there is conflicting

1 evidence that will support a finding of either disability or  
2 nondisability, the finding of the Commissioner is conclusive.  
3 *Sprague v. Bowen*, 812 F.2d 1226, 1229-1230 (9<sup>th</sup> Cir. 1987).

#### 4 **ALJ'S FINDINGS**

5 With respect to plaintiff's DIB claim, the ALJ found Mr.  
6 Esparza was insured through March 31, 2009 (Tr. 19, 21). The ALJ  
7 found at step one that although plaintiff worked after onset, it  
8 did not amount to substantial gainful activity (Tr. 21). At steps  
9 two and three, he found plaintiff suffers from BIF and reading and  
10 math disorders, impairments that are severe but do not meet or  
11 medically equal the severity of a Listed impairment (Tr. 21-22).  
12 At step four, relying on the vocational expert, the ALJ found  
13 plaintiff can perform his past work as a cashier, agricultural  
14 produce packer and sorter, industrial truck operator, and  
15 industrial cleaner (Tr. 27-28). The ALJ concluded plaintiff was  
16 not disabled as defined by the Social Security Act during the  
17 relevant period (Tr. 28).

#### 18 **ISSUES**

19 Plaintiff alleges the ALJ erred by failing to include  
20 attention deficit hyperactivity disorder (ADHD), disorder of  
21 written language, and low average memory functioning as severe  
22 impairments at step two (ECF No. 13 at 4). Second, the ALJ should  
23 have credited a November 2006 opinion by examining professional  
24 Kevin Shearer and approved by Frank Rosekrans, Ph.D. (ECF No. 13  
25 at 5-6). Next, the ALJ gave too much credit to James Bailey,  
26 Ph.D.'s, opinion. Dr. Bailey is a reviewing psychologist (ECF No.  
27 13 at 14-16). Finally, plaintiff alleges the ALJ's credibility  
28

1 assessment is flawed<sup>2</sup> (ECF No. 13 at 16-17).

2 In his response the Commissioner asserts the ALJ's decision  
3 is supported by substantial evidence and free of legal error. He  
4 asks the Court to affirm (ECF No. 15 at 17, 19).

## 5 DISCUSSION

### 6 A. Weighing medical evidence

7 In social security proceedings, the claimant must prove the  
8 existence of a physical or mental impairment by providing medical  
9 evidence consisting of signs, symptoms, and laboratory findings;  
10 the claimant's own statement of symptoms alone will not suffice.  
11 20 C.F.R. § 416.908. The effects of all symptoms must be evaluated  
12 on the basis of a medically determinable impairment which can be  
13 shown to be the cause of the symptoms. 20 C.F.R. § 416.929. Once  
14 medical evidence of an underlying impairment has been shown,  
15 medical findings are not required to support the alleged severity  
16 of symptoms. *Bunnell v. Sullivan*, 947 F.2d 341, 345 (9<sup>th</sup> Cr.  
17 1991).

18 A treating physician's opinion is given special weight  
19 because of familiarity with the claimant and the claimant's  
20 physical condition. *Fair v. Bowen*, 885 F.2d 597, 604-05 (9<sup>th</sup> Cir.  
21 1989). However, the treating physician's opinion is not  
22 "necessarily conclusive as to either a physical condition or the  
23 ultimate issue of disability." *Magallanes v. Bowen*, 881 F.2d 747,  
24 751 (9<sup>th</sup> Cir. 1989)(citations omitted). More weight is given to a

---

25 2

26 Plaintiff also alleges the ALJ's RFC assessment is "deeply  
27 flawed," but this argument repeats his contention the ALJ erred  
28 when he weighed the evidence. The RFC assessment is supported by  
the evidence and free of error.



1 treating physician than an examining physician. *Lester v. Chater*,  
2 81 F.3d 821, 830 (9<sup>th</sup> Cir. 1995). Correspondingly, more weight is  
3 given to the opinions of treating and examining physicians than to  
4 nonexamining physicians. *Benecke v. Barnhart*, 379 F.3d 587, 592  
5 (9<sup>th</sup> Cir. 2004). If the treating or examining physician's opinions  
6 are not contradicted, they can be rejected only with clear and  
7 convincing reasons. *Lester*, 81 F.3d at 830. If contradicted, the  
8 ALJ may reject an opinion if he states specific, legitimate  
9 reasons that are supported by substantial evidence. See *Flaten v.*  
10 *Secretary of Health and Human Serv.*, 44 F.3d 1453, 1463 (9<sup>th</sup> Cir.  
11 1995).

12 In addition to the testimony of a nonexamining medical  
13 advisor, the ALJ must have other evidence to support a decision to  
14 reject the opinion of a treating physician, such as laboratory  
15 test results, contrary reports from examining physicians, and  
16 testimony from the claimant that was inconsistent with the  
17 treating physician's opinion. *Magallanes v. Bowen*, 881 F.2d 747,  
18 751-52 (9<sup>th</sup> Cir. 1989); *Andrews v. Shalala*, 53 F.3d 1042-43 (9<sup>th</sup>  
19 Cir. 1995).

## 20 **B. Credibility**

21 To aid in weighing the conflicting medical evidence, the ALJ  
22 evaluated plaintiff's credibility and found him less than fully  
23 credible (Tr. 24-26). Credibility determinations bear on  
24 evaluations of medical evidence when an ALJ is presented with  
25 conflicting medical opinions or inconsistency between a claimant's  
26 subjective complaints and diagnosed condition. See *Webb v.*  
27 *Barnhart*, 433 F.3d 683, 688 (9<sup>th</sup> Cir. 2005).

28 It is the province of the ALJ to make credibility

1 determinations. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9<sup>th</sup> Cir.  
2 1995). However, the ALJ's findings must be supported by specific  
3 cogent reasons. *Rashad v. Sullivan*, 903 F.2d 1229, 1231 (9<sup>th</sup> Cir.  
4 1990). Once the claimant produces medical evidence of an  
5 underlying medical impairment, the ALJ may not discredit testimony  
6 as to the severity of an impairment because it is unsupported by  
7 medical evidence. *Reddick v. Chater*, 157 F.3d 715, 722 (9<sup>th</sup> Cir.  
8 1998). Absent affirmative evidence of malingering, the ALJ's  
9 reasons for rejecting the claimant's testimony must be "clear and  
10 convincing." *Lester v. Chater*, 81 F.3d 821, 834 (9<sup>th</sup> Cir. 1995).  
11 "General findings are insufficient: rather the ALJ must identify  
12 what testimony not credible and what evidence undermines the  
13 claimant's complaints." *Lester*, 81 F.3d at 834; *Dodrill v.*  
14 *Shalala*, 12 F.3d 915, 918 (9<sup>th</sup> Cir. 1993).

15       There is no evidence of malingering. The ALJ gave several  
16 clear and convincing reasons for his credibility assessment,  
17 including (1) plaintiff's daily activities are inconsistent with  
18 disabling impairment; (2) claimed limitations are contradicted by  
19 test results, and (3) plaintiff's inconsistent statements (Tr. 24-  
20 26).

21       (1) *Daily activities*. The ALJ observes alleged disabling  
22 limitations are undercut by plaintiff's wide range of activities  
23 (Tr. 25). Plaintiff alleges he is forgetful and has problems with  
24 distractibility, but as the ALJ accurately observes, Mr. Esparza  
25 has been able to maintain part-time employment without special  
26 supervision (after an initial two week period), take the bus to  
27 work and to pick up his nephew, supervise his nephew, and maintain  
28 independent living (Tr. 26-27). A vocational assessment in

1 February 2008 indicates plaintiff has no problem staying on task  
2 at his job (Tr. 232).

3 (2) *Test results*. Once a claimant produces objective medical  
4 evidence of an underlying impairment, an ALJ may not reject a  
5 claimant's subjective complaints based solely on a lack of  
6 objective medical evidence to fully corroborate the severity  
7 alleged, but it is one factor the ALJ may consider. See *Bunnell v.*  
8 *Sullivan*, 947 F.2d 341, 345 (9<sup>th</sup> Cir. 1991)(en banc). Plaintiff  
9 states he has memory and distractibility problems but Dr. Arnold's  
10 test results indicate good short and long term memory functioning  
11 and adequate concentration, as the ALJ points out (Tr. 25; 343).  
12 Dr. Genthe's assessed GAF of 70 indicates no more than mild  
13 symptoms or limitations (Tr. 259). Objective testing does not  
14 support allegedly disabling limitations.

15 (3) *Inconsistent statements*. The ALJ notes plaintiff  
16 testified he becomes distracted and fails to finish tasks, has  
17 memory problems, and needs his brother to remind him to perform  
18 basic grooming, complete daily chores, and pick up his nephew from  
19 school (Tr. 24). Yet when plaintiff has lived alone, he reported  
20 no problems with household chores, grocery shopping, or attending  
21 to his personal hygiene, as the ALJ observes (Tr. 26; 290).  
22 Inconsistent statements diminish credibility. *Thomas v. Barnhart*,  
23 278 F.3d 947, 958-959 (9<sup>th</sup> Cir. 2002).

24 The ALJ correctly relied on several factors, including daily  
25 activities inconsistent with disabling limitations, symptoms  
26 unsupported by objective testing, and inconsistent statements when  
27 he found plaintiff less than completely credible.

28 The ALJ's reasons for finding plaintiff less than fully

1 credible are clear, convincing, and fully supported by the record.  
2 See *Thomas v. Barnhart*, 278 F.3d 947, 958-959 (9<sup>th</sup> Cir. 2002)  
3 (proper factors include inconsistencies in plaintiff's statements,  
4 inconsistencies between statements and conduct, and extent of  
5 daily activities).

6 **C. Dr. Rosekrans - November 2006**

7 Plaintiff contends the ALJ failed to properly credit the  
8 November 2006 opinion of Kevin Shearer, MA, LMHC, and approved by  
9 Dr. Rosekrans (ECF No. 13 at 15). The Commissioner responds that  
10 the ALJ properly rejected Dr. Rosekrans's opinion because it is  
11 inconsistent with plaintiff's activities, and it is contradicted  
12 by the December 2006 and September 2007 opinions of two other  
13 examining psychologists: Thomas Genthe, Ph.D., and John Arnold,  
14 Ph.D., respectively (ECF No. 15 at 10-17).

15 About two months after onset Dr. Rosekrans diagnosed BIF, as  
16 well as disorders of reading, math, and written language. He  
17 assessed a GAF of 60 indicating moderate symptoms or functional  
18 difficulty. He opined plaintiff did not meet the diagnostic  
19 criteria for ADHD, and had not reported experiencing any ADHD  
20 symptoms within the past six months (Tr. 301). Dr. Rosekrans  
21 opined plaintiff would have great difficulty learning and  
22 performing basic skills in reading, mathematics, or written  
23 language, and is unable to independently analyze and/or solve  
24 problems, weigh alternatives, and/or make decisions (Tr. 287-303,  
25 duplicated at 323-339).

26 The ALJ gave this opinion little weight because plaintiff has  
27 "exhibited an ability to learn and perform basic work related  
28 skills at his employment with Value Village. This also shows he

1 can independently analyze and/or solve problems, weigh  
2 alternatives, and/or make decisions."  
3 (Tr. 27).

4 The ALJ is correct. When customers asked plaintiff questions  
5 he was unable to answer, Mr. Esparza responded appropriately by  
6 directing them to the correct person (Tr. 231).

7 **D. Dr. Genthe - December 2006**

8 About a month after Dr. Rosekrans's evaluation, Dr. Genthe  
9 tested plaintiff and reviewed records (Tr. 259-268). He diagnosed  
10 ADHD (NOS), math and reading disorders by history, and BIF with  
11 low average memory functioning. He opined plaintiff's current GAF  
12 was 70, indicating mild symptoms or functional difficulties. Dr.  
13 Genthe failed to see the degree of impairment that would support  
14 Mr. Esparza's prior ADHD diagnosis (Tr. 259). The ALJ notes Dr.  
15 Genthe's test results indicate mild limitations (Tr. 25).

16 **E. Dr. Arnold - September 2007**

17 Dr. Arnold examined plaintiff on September 5, 2007 (Tr. 341-  
18 344). He reviewed records, including Dr. Rosekrans's report (Tr.  
19 341-342), and administered testing. He diagnosed reading, math,  
20 and written language disorders by history, BIF by history, and  
21 rule out cannabis abuse (based on plaintiff's statement he uses  
22 marijuana 2-3 times a week)(Tr. 342-343)[At the hearing plaintiff  
23 denied making this statement. He asserted he smoked marijuana  
24 twice at age 18 or 19. See Tr. 41]. Dr. Arnold assessed a GAF of  
25 65 indicating moderate symptoms or limitations (Tr. 343).

26 The ALJ notes Dr. Arnold's testing revealed good short and  
27 long term memory and adequate concentration (Tr. 25).

28 ///

1 **F. Dr. Rosekrans - May 2008**

2 Dr. Rosekrans assessed plaintiff's functioning again in May  
3 2008, but based his opinion on the 2006 test results (Tr. 372-  
4 376). He opined plaintiff suffers several marked and moderate  
5 limitations (Tr. 387-388). The ALJ gave this opinion little weight  
6 because it is internally inconsistent, was rendered a year and  
7 half after testing, and, in the interval, plaintiff had maintained  
8 employment (Tr. 27) indicating he does not suffer marked and  
9 moderate limitations.

10 **G. Dr. Bailey - September 2007**

11 In September 2007 consultant James Bailey, Ph.D., reviewed  
12 the record (Tr. 347-364). He opined plaintiff is capable of  
13 simple, routine tasks, able to follow one and two-step  
14 instructions, and capable of superficial contact with co-workers,  
15 supervisors, and the general public. He may need additional time  
16 to learn new work procedures (Tr. 348-349). Plaintiff alleges the  
17 ALJ erred by essentially adopting Dr. Bailey's RFC assessment.

18 The ALJ relied on Dr. Bailey's opinion and on those of Drs.  
19 Arnold and Genthe when he assessed plaintiff's RFC. This  
20 constitutes the "other evidence" needed to support a decision to  
21 reject an examining professional's (like Dr. Rosekrans's) opinion.  
22 See *Magallanes v. Bowen*, 881 F.2d at 751-752; *Andrews v. Shalala*,  
23 53 F.3d at 1042-1043.

24 The ALJ's reasons for rejecting some of the psychologist's  
25 opinions are specific, legitimate and supported by substantial  
26 evidence. The ALJ did not include ADHD as a severe impairment  
27 because the diagnosis is disputed by some of the examiners (i.e.,  
28 Drs. Rosekrans and Arnold did not diagnose ADHD). Similarly,

1 plaintiff contends the ALJ should have found that written language  
2 disorder and low average memory functioning are severe impairments  
3 (ECF No. 13 at 4). This is another way of saying plaintiff  
4 disagrees with the way the ALJ weighed the conflicting evidence.

5 The ALJ is responsible for reviewing the evidence and  
6 resolving conflicts or ambiguities in testimony. *Magallanes v.*  
7 *Bowen*, 881 F.2d 747, 751 (9<sup>th</sup> Cir. 1989). It is the role of the  
8 trier of fact, not this court, to resolve conflicts in evidence.  
9 *Richardson*, 402 U.S. at 400. The court has a limited role in  
10 determining whether the ALJ's decision is supported by substantial  
11 evidence and may not substitute its own judgment for that of the  
12 ALJ, even if it might justifiably have reached a different result  
13 upon de novo review. 42 U.S.C. § 405 (g).

14 The Court finds the ALJ's assessment of the evidence is  
15 supported by the record and free of legal error. The court finds  
16 unpersuasive plaintiff's contention the ALJ incorrectly formatted  
17 his decision.

#### 18 CONCLUSION

19 Having reviewed the record and the ALJ's conclusions, this  
20 court finds that the ALJ's decision is free of legal error and  
21 supported by substantial evidence.

#### 22 IT IS ORDERED:

23 1. Defendant's Motion for Summary Judgment (**ECF No. 14**) is  
24 **GRANTED.**

25 2. Plaintiff's Motion for Summary Judgment (**ECF No. 11**) is  
26 **DENIED.**

27 The District Court Executive is directed to file this Order,  
28 provide copies to counsel, enter judgment in favor of defendant,

1 and **CLOSE** this file.

2 DATED this 13th day of June, 2011.

3

4

s/ James P. Hutton  
JAMES P. HUTTON  
UNITED STATES MAGISTRATE JUDGE

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28